IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 964 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNABEN DEVENBHAI JOSHI & 1 - Petitioner(s)
Versus
JASHPALKAUR SUKHBIRSING PADAM THR' POWER OF ATTORNEY OF - Respondent(s)

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Appearance :

MR AY KOGJE for Petitioner(s) : 1 - 2.MS SNEHA J JANI for Petitioner(s) : 1 - 2.
MR AR MAJMUDAR for Respondent(s) : 1,
MR NK MAJMUDAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/03/2007

ORAL JUDGMENT

In the present petition, the petitioner land-lord has challenged an order dated 19th December 2005 passed by the Presiding Officer, Fast Track Court

No.8, Vadodara in Misc. Civil Appeal No.240 of 2005.

2. The petitioner was the land-lord of the suit premises and the respondent was the tenant. The respondent filed Suit No.61/02 before the Small Causes Court, Vadodara seeking permanent injunction against eviction. There was compromise between the parties. The respondent agreed to pay rent regularly and to handover the possession of the suit property by 21.5.2004. The respondent also agreed that if he did not pay rent continuously for a period of three months, the petitioner would be entitled to seek recovery of the possession. On the basis of the agreement, the Trial Court was pleased to pass a compromise decree.

3. The respondent did not pay the rent regularly. The petitioner, therefore, preferred execution application No.5/2003 seeking possession of the property in question. The Trial Court was pleased to allow the application by an order dated 28th October, 2005. The respondent, however, preferred appeal before the District Court being Misc. Civil Appeal No.240 of 2005. This appeal came to be allowed by the impugned order. In the said order, the District Court was of the opinion that the compromise itself was contrary to the provisions contained in the Bombay Rents, Hotel and Lodging House Rates Control, 1947. It was observed that the Court could not have agreed to accept the terms and conditions whereby the tenant would be forced to

evict the premises upon default only for a period of three months.

4. I need not go into the question of validity of the said observations made by the Appellate court. Significantly, even if at the relevant time, the petitioner was not entitled to receive possession prior to the last date on which the respondent had agreed to hand-over possession, by now the said period is over since nearly three years. One may recall that the respondent had agreed to hand over the possession of the suit premises in any case latest by 21.5.2004. He has continued to enjoy the possession of the suit premises for nearly three years thereafter. In any view of the matter, the respondent cannot seek to oppose the exeuction for eviction.

5. Under the circumstances, the impugned order dated 19th December, 20065 is quashed. The petition is allowed. Rule is made absolute accordingly.

(Akil Kureshi, J.)

(vjn)